

Endorsed Order:

It shouldn't be that hard to ascertain whether the ignition switch installed in Plaintiff Alers' 2010 Cobalt was made by Old GM or New GM. An evidentiary hearing to ascertain that would be burdensome for the parties (especially since Plaintiff Alers and his counsel apparently reside and work on the West Coast), and an ill-advised use of judicial resources.

Counsel for New GM and Mr. Alers are to exchange information and confer with each other to try to ascertain, by agreement, whether the ignition switch was made by Old GM, and advise the Court after they have done so. If it turns out that the ignition switch was made by Old GM (in which case it would at least seemingly be covered by the Sale Order), Mr. Alers should then consider whether he wishes to withdraw his No Stay Pleading (which he may do without penalty) and then file a letter or pleading advising the Court of his decision. If the ignition switch was not made by Old GM, New GM should then file a supplemental letter or pleading advising the Court as to whether it nevertheless contends that the Sale Order applies. In each case, the party wishing to continue to litigate should advise the Court of the basis for its position.

The parties may take any reasonable time necessary to clarify the matter for the Court. In the meantime, Mr. Alers' action remains stayed, and both sides' rights with respect to any and all pending issues are reserved.

Dated: New York, New York
November 10, 2014

s/Robert E. Gerber
United States Bankruptcy Judge

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ALEJANDRO ALERS, SR.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

ALEJANDRO ALERS, SR.

Plaintiff,
vs.

GENERAL MOTORS, LLC

Defendant.

CASE NO. 09-50026 (REG)

NO STAY PLEADING TO
NOTICE OF FILING EIGHTH
SUPPLEMENT TO SCHEDULE "1"
TO THE MOTION TO ENFORCE
THE COURT'S JULY 5, 2009
SALE ORDER AND
INJUNCTION. IN RE MOTORS
LIQUIDATION COMPANY, et
al f/k/a/ GENERAL MOTORS
CORP., et al.

1. In June 2009, Old GM filed Chapter 11 proceedings in the United States Bankruptcy Court for the Southern District of New York. Through a bankruptcy-approved sale process pursuant to Section 363 of the Bankruptcy Code, New GM acquired various of Old GM's assets. New GM's purchase of Old GM's assets closed on July 10, 2009. *DEFENDANT'S NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441(A), CASE NO. 2:14-CV-7258, DOCUMENT#1, page 4, paragraph 7.*

NO STAY PLEADING

1 2. Plaintiff, Alejandro Alers, Sr., purchased a New
2 2010 Chevrolet Cobalt from New GM's authorized dealer,
3 S & J Chevrolet in Cerritos California on June 19,
4 2010.

5
6 3. Plaintiff, Alejandro Alers, Sr., filed a lawsuit
7 against New GM in California State Court, Case No.
8 VC064207 on August 11, 2014.

9
10 4. Defendant, New GM, filed for removal of the
11 state case to federal court, Case No. 2:14-cv-07258-
12 JVS-AN, September 17, 2014.

13
14 5. Defendant, New GM, filed a Notice to enforce
15 the Bankruptcy Court's July 5, 2009 Sale Order and
16 Injunction against the Plaintiff's court action.

17
18 6. This Pleading is in opposition to enforce the
19 Sale Order and Injunction against the Plaintiff's court
20 action against Defendant, New GM.

21
22 **BANKRUPTCY COURT HAS NO JURISDICTION OVER PLAINTIFF'S**
23 **ACTION AGAINST THE DEFENDANT, NEW GM.**

24
25 7. The Bankruptcy Sale Order closed on July 10,
26 2009. New GM assumed control over the assets and
27 liabilities that existed after that date. The Plaintiff

28 NO STAY PLEADING

1 was not a creditor during the Bankruptcy proceedings.
2 The Plaintiff did not purchase the Chevrolet Cobalt
3 until June 19, 2010, approximately eleven months after
4 the Sale close date. Bankruptcy proceedings was
5 designed to give an honest but unfortunate debtor a new
6 opportunity in life and a clear field for future
7 effort, unhampered by the pressure and discouragement
8 of pre-existing debt. Local Loan Co. v. Hunt, 292 U.S.
9 234, 244(1934). The Plaintiff was not a pre-existing
10 creditor, and the debt/ debt claim did not exist at the
11 time the bankruptcy petition was filed by Old GM. In
12 addition, the 2010 Chevrolet Cobalt was manufactured by
13 New GM in 2010, all parts, including the ignition
14 switch were produced in 2010 according to the
15 Defendant, New GM. *DEFENDANT'S ANSWER AND AFFIRMATIVE*
16 *DEFENSES, CASE NO. 2:14-CV-07258-JVS-ANx, page 2,*
17 *paragraphs 1 & 2.* (Attached as Exhibit A).
18

19 8. The Plaintiff was not permitted to participate
20 in the Bankruptcy proceedings of Old GM. The Bankruptcy
21 Court did not provide the Plaintiff with a copy of the
22 Discharge Plan that Old GM had filed with the
23 Bankruptcy Court. Second, the Plaintiff was not given
24 the opportunity to participate in the Section 341
25 Meeting to permit the Plaintiff, as a creditor, to
26 question Old GM about the debts that Old GM had plan to
27 discharge or pay. Third, the Bankruptcy Court failed to
28

NO STAY PLEADING

1 provide the Plaintiff with a copy of the final order of
2 discharge that informs creditors which debts have been
3 discharged. Fourth, because of Old GM and New GM's
4 failure to disclose the defective ignition switch
5 problems to the public and to the Plaintiff, Plaintiff
6 was denied the right to object to the dischargeability
7 of Old GM's debts by New GM under section 532(a)(2).
8 These denials of opportunities to participate in the
9 Bankruptcy proceedings violate the Plaintiff's rights
10 of Due Process to appear and be heard under the Fifth
11 Amendment of the United States Constitution. Now, the
12 Bankruptcy Court wants to enforce a Sale order and
13 Injunction against the Plaintiff who did not have the
14 opportunity to participate in the Bankruptcy proceeding
15 as a creditor.

16
17 **THERE IS NO COMMON QUESTION OF LAW OR FACT IN**
18 **PLAINTIFF'S ACTION**
19

20 9. Plaintiff's action failed to have the recall
21 condition("Ignition Switch Recall Condition").
22 *DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES, page 2,*
23 *paragraph 1, lines 7-14.* The Defendant has separated
24 the Plaintiff's lawsuit from other lawsuits. In
25 addition, there were over 100 different lawsuits filed
26 that have over 100 different factual settings,
27 therefore eliminated the common question of fact.

28 NO STAY PLEADING

1
2 10. The Plaintiff filed the lawsuit in California
3 State Court based on California State laws for breach
4 of contract, breach of warranty, fraud based on
5 concealment, rescission and damages. There were over
6 100 lawsuits against the Defendant from different
7 states which utilized different laws to support the
8 different causes of action, therefore there was no
9 common question of law.
10

11 **NEW YORK IS AN INCONVENIENT FORUM TO LITIGATE**
12

13 11. Plaintiff purchased the 2010 Chevrolet Cobalt
14 in Cerritos California. The contract was formed in
15 Cerritos California. The breach of the contract and
16 breach of warranty, fraud, rescission and damages
17 occurred in Cerritos California. Any witnesses to the
18 contract, likely S & J Chevrolet, are located in
19 Cerritos California. The Plaintiff is a resident of Los
20 Angeles, nearby to Cerritos California. The Defendant
21 has hired a Los Angeles Law Firm to represent the
22 Defendant in Los Angeles. The most convenient venue for
23 litigation is Los Angeles California.
24

25 **ENFORCEMENT OF THIS SALE ORDER AND INJUNCTION WILL**
26 **INTERFERE WITH THE PROGRESSION AND INTERNAL ORDERS OF**
27 **MDL NO. 2543 AND CASE NO. 2:14-CV-07258.**
28

NO STAY PLEADING

1 12. This bankruptcy proceedings has closed against
2 the Old GM. The Plaintiff has filed a new lawsuit
3 against New GM subsequent to the closing sale date of
4 the bankruptcy proceeding. The Sale Order and
5 Injunction will hinder the progression of this present
6 lawsuit under MDL NO. 2543 and its internal orders as
7 well as the present lawsuit in California-2:14-cv-07258
8 and its internal orders.

9
10 13. Plaintiff prays for the reasons stated above
11 that the Bankruptcy Court grants the No Stay Pleading
12 in Plaintiff's favor, and permit the Plaintiff to
13 continue the lawsuit against New GM without any
14 restrictions.

15
16 DATED: October 6, 2014

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18
19 By: 

20 ALEJANDRO ALERS, JR., Esq.

21 Attorney for Plaintiff,

22 ALEJANDRO ALERS, SR.

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28 NO STAY PLEADING